

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 14, 2004

IN RE:

APPLICATION OF COVISTA, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE
TELECOMMUNICATIONS SERVICES
WITHIN THE STATE OF TENNESSEE

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DOCKET NO.
03-00459

INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on March 15, 2004, to consider the *Application for Certificate of Public Convenience and Necessity to Provide Telecommunications Services within the State of Tennessee* (the "*Application*") filed by Covista, Inc. ("Covista") on August 1, 2003. The Application requests the Authority to grant a certificate of public convenience and necessity to provide facilities-based local exchange telecommunications services, including exchange access services, within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

Covista's *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service

therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.¹

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999); (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001) The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, L L C to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The March 15, 2004 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on March 1, 2004. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 15, 2004, Frank J. Pazera, Chief Financial Officer for Covista, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. H. LaDon Baltimore, Esq., Farrar & Bates, 211 Seventh Avenue North, Suite 420, Nashville, Tennessee 37219-1823, appeared on behalf of Covista. Upon Covista's conclusion of the presentation of its proof, the Hearing Officer granted Covista's *Application* based upon the following findings of fact and conclusions of law:

I. Covista's Qualifications

1. Covista is a corporation originally organized as Mansol Ceramics Company under the laws of the State of New Jersey on March 9, 1960. Mansol Ceramics Company changed its corporate name to TotalTel, Inc. by filing an amendment to its Charter.² TotalTel, Inc. was granted authority to transact business in the State of Tennessee on October 24, 1997. TotalTel, Inc. filed an *Amended Certificate of Authority* on July 27, 2000, and changed its corporate name to Covista, Inc.³

² On February 4, 1994, TotalTel USA Communications, Inc., the sole shareholder in the corporation, by unanimous consent of its Board of Directors, consented to the above amendment.

³ Covista, Inc. is a wholly-owned operating subsidiary of Covista Communications, Inc., a publicly held fully reporting Securities Exchange Commission Company. Covista Communications, Inc. was qualified to transact business in the State of Tennessee on February 18, 2003.

2. The complete street address of Covista's registered agent is TCS Corporate Services, Inc., 1900 Church Street, Suite 400, Nashville, Tennessee 37203. The complete street address of Covista's corporate office is 721 Broad Street, Suite 200, Chattanooga, Tennessee 37402. The telephone number is (423) 648-9595 and the facsimile number is (423) 648-9597.

3. The *Application* and supporting documentary information existing in the record indicate that Covista has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services and within the State of Tennessee. Specifically, Covista's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Covista has the necessary capital and financial ability to provide the services it proposes to offer.

5. Covista has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. Proposed Services

Covista intends to provide facilities-based local exchange telecommunications services, including exchange access services, within the State of Tennessee.⁴

III. Permitting Competition to Serve the Public Convenience and Necessity

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Covista's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State

⁴ In Docket No. 95-03238, Covista, formerly known as TotalTel USA Communications, Inc., by Order dated February 8, 1996, was granted authority to resell interexchange telecommunications services and operator services in Tennessee. In Docket No. 97-07619, TotalTel USA Communications, Inc., by Order dated August 7, 1998, was granted authority to transfer the Certificate of Public Convenience and Necessity of TotalTel USA Communications, Inc. to TotalTel, Inc. In Docket No. 01-00695, TotalTel, Inc., by Order dated August 21, 2001, was granted authority to change its name from TotalTel, Inc. to Covista, Inc.

and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

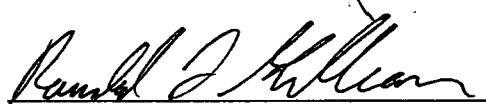
Covista has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

V. Compliance with Tennessee's County-Wide Calling Requirements

Covista has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate of Public Convenience and Necessity to Provide Telecommunications Services within the State of Tennessee* of Covista, Inc. is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.


Randal Gilliam, Hearing Officer